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BROOKS, PIERCE, McLENDON, HUMPHREY & LEONARD, L.L.P.ATTORNEYS AT LAW
RALEIGH, NORTH CAROLINAMAILING ADDRESS
POST OFFICE BOX 1800
RALEIGH, N.C. 27602OFFICE ADDRESS
SUITE 1800
FIRST UNION CAPITOL CENTER
130 FAYETTEVILLE STREET MALL
RALEIGH, N.C. 27601TELEPHONE (919) 839-0300
FACSIMILE (919) 839-0304HENRY C. FRYE
OF COUNSELJULEE LLOYD
SPECIAL COUNSEL

FOUNDED 1897

AUBREY L. BROOKS (1872-1958)
W. H. HOLDERNESS (1904-1955)
L. P. McLENDON (1890-1968)
KENNETH M. BRIM (1898-1974)
C. T. LEONARD, JR. (1908-1983)
CLAUDE C. PIERCE (1913-1988)
THORNTON H. BROOKS (1912-1988)
D. NEIL DANIELS (1911-1997)GREENSBORO OFFICE
2000 RENAISSANCE PLAZA
230 NORTH ELM STREET
GREENSBORO, N.C. 27401WASHINGTON OFFICE
801 PENNSYLVANIA AVENUE, N.W.
SUITE 900, SOUTH BUILDING
WASHINGTON, D.C. 20004

WRITER'S DIRECT DIAL

WRITER'S EMAIL ADDRESS
KUSHNER@BROOKSPIERCE.COML. P. McLENDON, JR.
HUBERT HUMPHREY
EDGAR S. FISHER, JR.
W. ERWIN FULLER, JR.
JAMES T. WILLIAMS, JR.
WADE H. HARGROVE
M. DANIEL McGINN
MICHAEL O. WEAVER
WILLIAM G. McHAIRY
EDWARD C. WINSLOW III
HOWARD L. WILLIAMS
GEORGE W. HOUSE
WILLIAM P. H. CARY
REID L. PHILLIPS
ROBERT A. SINGER
JOHN H. SMALL
RANDALL A. UNDERWOOD
S. LEIGH HODENBROUGH IV
MARK J. PHAM
JILL R. WILSON
MARC D. BISHOP
JIM W. PHILLIPS, JR.
MACK SPERLING
JEFFREY E. OLEYNIK
MARK DAVISON
JOHN W. ORMAND III
ROBERT J. KING II
V. RANDALL TINSLEY
S. KYLE WOOSLEY
FOREST W. CAMPBELL, JR.
MARCUS W. TRATHEN
JEAN C. BROOKS
JAMES C. ADAMS IIALLISON M. GRIMM
ELIZABETH S. BREWINGTON
H. ARTHUR BOLLICK II
J. EDWIN TURNER
JOHN M. CROSS, JR.
JENNIFER K. VAN ZANT
KATHLEEN H. THORNTON
KEARNS DAVIS
DAVID W. BAR
BRIAN J. McMILLAN
DAVID KUSHNER
DEREK J. ALLEN
ELIZABETH V. LAPOLETTE
GINGER S. SHIELDS
COE W. RAMSEY
NATALIE KAY SANDERS
ROBERT W. SAUNDERS
JENNIFER T. HARROD
CHARLES E. COBLE
JOHN N. DEANGELO
CLINTON R. PINYAN
KATHRYN V. PURDOM
JENNIFER L. DAVIS
STEPHEN S. HARTZELL JORDAN
JESSICA M. MARLES
TERESA D. LATCH BRYANT
ELIZABETH TAYLOR McHAFFEY
ANDREW J. HAILE
J. BENJAMIN DAVIS
CAROLINE R. NEIL
KATHERINE A. MURPHY
SARA H. VIZITHUM

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

December 2, 2002

Ms Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W., TW-A325
Washington, D.C. 20544Re: Amendment of Section 73.202(b), Table of Allotments, FM Broadcast
Stations (Goldsboro, Smithfield, Louisburg, and Rolesville, North
Carolina)
MM Docket No. 02-40: RM-10377: RM-10508

Dear Ms. Donch:

Enclosed please find, on behalf of New Age Communications, Inc., the original and four
copies of a Reply to Opposition to Motion for Leave to File Supplement for filing in the
above-referenced matters.If any questions should arise during the course of your consideration of this matter, it is
respectfully requested that you communicate with the undersigned.

Sincerely,



David Kushner

Enclosures

No. of Copies rec'd 074
List ABOVE

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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DEC - 2 2002

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY**

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 02-40
Table of Allotments)	RM-10377
FM Broadcast Stations)	RM-10508
(Goldsboro, Smithfield, Louisburg, and)	
Rolesville, North Carolina))	

Reply to Opposition to Motion for Leave to File Supplement

Sew Age Communications, Inc. ("NAC"), licensee of Station WKIX(FM), Channel 272A, Goldsboro, North Carolina, by its counsel, hereby submits this Reply to the Opposition to Motion for Leave to File Supplement filed by Franklin Broadcasting Co., Inc., licensee of WHLQ(FM), Channel 273A, Louisburg, North Carolina ("WHLQ"), on November 19, 2002. In reply, **NAC** shows the following:

On November 4, 2002, **NAC** sought leave to supplement the record in this proceeding due to the October 2002 release by the U.S. Census Bureau of highly pertinent information showing that Rolesville, North Carolina, is now partially located within the Raleigh Urbanized Area. Subsequently, on November 19, 2002, **WHLQ** filed an Opposition, asserting that **NAC's** good faith attempt to supplement the record is merely a ploy to delay the proceeding. This contention, as is **WHLQ's** entire Opposition, is meritless.

¹ AS an initial matter, **NAC** observes that **WHLQ's** Opposition is untimely and should not be considered for that reason alone. Pursuant to Sections 1.45(b) and 1.4 of the Commission's rules, any opposition to **NAC's** Motion, which was filed on November 4, 2002, and served by U.S. Mail, would have been due on November 18, 2002. Inexplicably, **WHLQ** did not file and serve its Opposition until November 19, 2002.

WHLQ claims an "anonymous" source at the U.S. Census Bureau informed counsel for WHLQ that the information concerning the Raleigh Urbanized Area that KAC wishes to supplement the record with became available on May 1, 2002, and, thus, should have been filed along with NAC's May 10, 2002, Reply Comments. This unattributed statement is not true.

Inexplicably, WHLQ does not provide any identification of this anonymous "source" of information or any elaboration on the alleged conversation that transpired. However, and quite to the contrary, counsel for NAC spoke with Mr. David Altman of the Geographic Entities Office of the U.S. Census Bureau on November 26, 2002. See Declaration of Jennifer L. Davis (attached hereto). Mr. Altman confirmed that maps generated by the U.S. Census Bureau displaying Urbanized Areas are being released to the general public on a "flow basis."² Mr. Altman also stated that all Urbanized Area maps have been created and released *after May 2002*. Mr. Altman further confirmed that the maps for the Raleigh, North Carolina, Urbanized Area were not released to the general public until *October 2002*.³ Therefore, it is unequivocally clear that the information that NAC provided in its Motion and Supplement of November 4, 2002, is accurate and that it would have been impossible for NAC to have utilized these data in its May 10, 2002, Reply Comments.

The urban and rural population data used to generate that portion of the Raleigh Urbanized Area Outline Map showing Rolesville, North Carolina, as a part of the Raleigh Urbanized Area has

² See Davis Declaration at ¶ 3; see also <<http://www.census.gov/geo/www/maps/ua2kmpas.htm>>.

³ See Davis Declaration at ¶¶ 3-4. Further confirmation of the date of availability of the Raleigh Urbanized Area maps is provided on the relevant directory index of the Census Bureau's website. This shows that all the Raleigh maps were last modified on October 1, 2002, and made available to the general public no sooner than that date. See <<http://ftp2.census.gov/geo/maps/urbanarea/uaoutline/UA2000/ua73261/>> (a copy of which is attached hereto as Exhibit A).

also only recently become available, as Mr. Altman also confirmed.⁴ These data show that of the 907 residents of Rolesville, North Carolina, 786 of them—87%—live within the Raleigh Urbanized Area.⁵ Obviously, a *Tuck* analysis⁶ is required under these circumstances.⁷

WHLQ also claims that under the Commission's rules, there is no basis upon which NAC may seek leave to supplement the record or for the Commission to consider new, relevant information. This cramped interpretation of Section 1.415(d) belies that rule's express language as well as the Commission's past practice. The rule provides that additional comments may be filed if "specifically requested or authorized by the Commission." The Commission will have "authorized" NAC's Supplement if it grants NAC's Motion. The Commission routinely considers and grants such requests where good cause is shown. In its Motion and Supplement, NAC showed why good cause existed in this case—the previous unavailability of this census data to the general public, upon which the entire public interest analysis may well be based.

WHLQ actually argues that the Commission should make a determination based on outdated, decade-old information because that was the information that "existed when NAC made its

⁴ See Davis Declaration at ¶ 4.

⁵ See <http://factfinder.census.gov/servlet/DTTable?_ts=56381833630> (a copy of which is attached hereto as Exhibit B).

⁶ See *Faye and Richard Tuck*, 3 FCC Rcd 5374 (1988).

⁷ See, e.g., *Malvern and Bryant, Arkansas*, 14 FCC Rcd 3576 (1999), at ¶ 4 & n.4 (stating that even though only 17.6% of community's population resides in urbanized area and proposed 70 dBu contour covers less than 1% of urbanized area, *Tuck* analysis still required); *Bay St. Louis and Poplarville, Mississippi*, 10 FCC Rcd 13144 (1995); *Falmouth and Mashpee, Massachusetts*, 10 FCC Rcd 10445 (1995); *Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586 (1994); see also *Hallie and Ladysmith, Wisconsin*, 10 FCC Rcd 9257 (1995).

proposal.³ WHLQ's bizarre argument, which it fails to support, is nonsensical. Data regarding population, its urban and rural concentrations, and the extent of urbanized areas are collected, compiled and released by the U.S. Census Bureau every ten years. As a regulatory agency of the federal government, it is especially appropriate for the Commission to take notice of the most accurate and timely information available to it from another agency of the federal government. In addition, clearly the public interest and the citizens of the communities affected by this proceeding would be ill-served by Commission reliance on data that are no longer accurate, especially when accurate, up-to-date information is now available. WHLQ's assertion that the Commission should base its decision on 1990 census data simply has no merit.

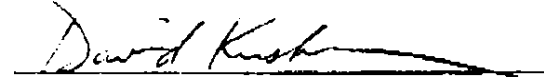
In addition, WHLQ ignores the fact that NAC specifically requested that the Commission Issue a Request for Supplemental Information and that WHLQ be given an opportunity to file comments in response thereto. This comports with Commission practice in rulemaking proceedings to amend the Table of Allotments⁴ and obviously satisfies the "requested by" component of Section 1.415(d) of the Commission's rules.

For the foregoing reasons and for the reasons contained in its Motion, NAC respectfully requests that leave to file the Supplement attached to its November 4, 2002, Motion be granted. In addition, NAC respectfully requests that the Commission consider the recent release of the Census 2000 data relating to the partial incorporation of Rolesville into the Raleigh Urbanized Area and that the Commission issue a Request for Supplemental Information affording WHLQ a period

³ See, e.g., *Elizabeth City, North Carolina, and Chesapeake, Virginia*, Request for Supplemental Information, 7 FCC Rcd 6815 (1992); *Bay St. Louis and Poplarville, Mississippi*, Request for Supplemental Information, 6 FCC Rcd 4400 (1991).

of 30 days to submit information relevant to a *Tuck* analysis and that NAC be afforded an additional period of 30 days to file reply comments pursuant to such a Request.

Respectfully submitted,



Wade H. Hargrove

David Kushner

Jennifer L Davis

BROOKS, PIERCE, McLENDON,
HUMPHREY & LEONARD, L.L.P.
First Union Capitol Center, Suite 1600
150 Fayetteville Street Mall (27601)
Post Office Box 1800
Raleigh, North Carolina 27602
Telephone: (919) 839-0300
Facsimile: (919) 839-0304

Counsel to New Age Communications Inc

December 2, 2002

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
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Amendment of Section 73.202(b))	MM Docket No. 02-40
Table of Allotments)	RM-10377
FM Broadcast Stations)	RM-10508
(Goldsboro, Smithfield, Louisburg, and)	
Rolesville, North Carolina))	

Declaration of Jennifer L. Davis

I, Jennifer L. Davis, hereby declare and state as follows:

1. I am an attorney at Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P. in Raleigh, North Carolina. This law ~~firm~~ represents New Age Communications, Inc. ("NAC"), licensee of WKIX(FM), Goldsboro, North Carolina, in the above-captioned matter.

2. On November 26, 2002, at approximately 2:00 p.m., I spoke by telephone with Mr. David Altman in the Geographic Entities Office of the U.S. Census Bureau.

3. During our conversation, Mr. Altman confirmed that maps generated by the U.S. Census Bureau displaying Urbanized Areas are being released to the general public on a "flow basis." A statement on the U.S. Census Bureau's website confirms this. See <<http://www.census.gov/geo/www/maps/ua2kmpas.htm>>. Mr. Altman also informed me that all Urbanized Area maps have been created and released after May 2002. Even at this time, maps for all Urbanized Areas in the United States have yet to be released.

4. Mr. Altman further confirmed that the maps for the Raleigh, North Carolina, Urbanized Area were not released to the general public until October 2002.

5. Mr. Altman also directed me to the Census Bureau's webpage containing information on the urban and mail population data used to generate that portion of the Raleigh Urbanized Area Outline Map showing Rolesville, North Carolina, as a part of the Raleigh Urbanized Area. See <http://factfinder.census.gov/servlet/DTTable?_ts=56381833630>. These data show that of the 907 residents of Rolesville, North Carolina, 736 of them live within the Raleigh Urbanized Area. Only 121 Rolesville residents live outside the Raleigh Urbanized Area. Mr. Altman stated that he was not aware of the exact date that these data would have been made available to the general public on the U.S. Census Bureau's website, but that it would have been after May 2002, as the information is also being released on a "flow basis" on or about the same schedule that the Urbanized Area maps are being released.











I declare under penalty of perjury that the foregoing Declaration is true and correct to the best of my knowledge, information, and belief

12/2/02
Date

Jennifer L. Davis
Jennifer L. Davis

Exhibit A

Index of /geo/maps/urbanarea/uaoutline/UA2000/ua732

<u>Name</u>	<u>Last modified</u>	<u>Size</u>	<u>Description</u>
 Parent Directory	14-Nov-2002 13:15		
 ua73261_00.pdf	01-Oct-2002 14:53	2.2M	
 ua73261_01.pdf	01-Oct-2002 14:53	808k	
 ua73261_02.pdf	01-Oct-2002 14:53	650k	
 ua73261_03.pdf	01-Oct-2002 14:53	594.4	
 ua73261_04.pdf	01-Oct-2002 14:53	920k	
 ua73261_05.pdf	01-Oct-2002 14:53	683k	
 ua73261_06.pdf	01-Oct-2002 14:53	455k	
 ua73261_07.pdf	01-Oct-2002 14:53	690k	
 ua73261_08.pdf	01-Oct-2002 14:53	570k	

Apache/1.3.26 Server at www2.census.gov Port 80

Exhibit B

U.S. Census Bureau**American FactFinder**[Main](#) | [Search](#) | [Feedback](#) | [FAQs](#) | [Glo](#)***Detailed Tables*****P2. URBAN AND RURAL (6) - Universe: Total population****Data Set: Census 2000 Summary File 1 (SF 1) 100-Percent Data**

NOTE: For information on confidentiality protection, nonsampling error, and definitions, see <http://factfinder.census.gov/home/en/data/notes/expstfu.htm>

	Rolesville town, North Carolina
Total:	907
Urban:	785
Inside urbanized areas:	785
Inside urban clusters:	3
Rural:	121
Not defined for this file:	0

U.S. Census Bureau
Census 2000

Standard Error/Variance documentation for this dataset:**Accuracy of the Data: Census 2000 Summary File 1 (SF 1) 100-Percent Data (PDF 44KB)**

Certificate of Service

The undersigned, of the law firm of Brooks, Pierce, McLendon, Humphrey & Leonard, L.L.P., hereby certifies that s/he has caused a copy of the foregoing **Reply to Opposition to Motion for Leave to File Supplement** to be placed in the U.S. Mail, first-class postage prepaid, addressed as follows:

James A. Kormer
Koerner & Olender, P.C.
5809 Nicholson Lane, Suite 124
North Bethesda, Maryland 20852-5706

This the 2d day of December, 2002

Sandra S. Kreps